



Atty. Dkt. No. 065691-0421

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Nathalie PICCARDI *et al.*
Title: MACA EXTRACT AND COSMETIC COMPOSITION
CONTAINING SUCH AN EXTRACT
Appl. No.: 10/561,271
International Filing Date: 6/17/2004
371(c) Date: 12/19/2005
Examiner: Michael V. Meller
Art Unit: 1655
Confirmation No.: 5904

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the restriction requirement set forth in the Office Action mailed November 26, 2007, Applicants hereby provisionally elect Group II, drawn to an aqueous peptide extract of maca. Claims 6-7 and 12-14 read on the elected group.

Traversal of the restriction

This election is *with traverse*, for at least the following reason.

At page 3 of the Office Action it is asserted that a maca peptide extract is not novel/nonobvious in view of JP 08012565 and, hence, there is no special technical feature. Applicants respectfully traverse.

All claims depend from claim 1, and hence require an aqueous peptide extract of maca obtained using the method of claim 1, which results in extracts fundamentally different from that described in the abstract of JP 08012565.

In the abstract of JP 08012565, the maca extract is obtained only by contacting maca with an organic solvent, selecting *for* hydrophobic proteins, and *against* hydrophilic proteins. Indeed, by using only an organic solvent, such as chloroform or methanol, only hydrophobic proteins may be extracted from maca. As a result, the extract obtained using the method of JP 08012565 does not comprise peptides derived from hydrophilic proteins, contrary to the aqueous extract according to the invention.

In addition, the method described in the abstract of JP 08012565 does not use an enzymatic hydrolysis step or an ultrafiltration step that ensures that the extract comprises only compounds less than 10 kD. As a result, even the hydrophobic proteins extracted from maca with the organic solvent would not be hydrolyzed and would have a molecular weight much higher than 10 kD, given that most proteins have a molecular weight of at least 20, and usually at least 30 kD. For instance, as indicated in the attached article, yeast proteins have an average molecular weight of 53 kD, and proteins can have a molecular weight up to 3000 kD (see page 3, just above the paragraph entitled "Chemical synthesis"). In summary, the extract obtained using the method described in the abstract of JP 08012565 contains non hydrolyzed hydrophobic proteins, most of which have a molecular weight higher than 10 kD.

By contrast, the present invention is directed to an aqueous (*i.e.* hydrophilic) peptide extract, and *all* proteic components having a molecular weight lower than 10 kD. Thus the presently claimed composition is neither described nor inherently present in the extract described in the abstract of JP 08012565, and the cited document does not anticipate nor render obvious the present special technical feature.

In addition, the claimed aqueous peptide extract provides unexpected results. First, the claimed peptide extract stimulates the cell metabolism of dermal fibroblasts (see Example 2-1), especially "aged" fibroblasts, and thus counters intrinsic skin ageing (see Example 2-2). Second, the claimed peptide extract also prevents the formation of free radicals (see Example 2-3). These properties are unexpected and beneficial, and are therefore additional indicia of nonobviousness.

For at least these reasons, the claimed aqueous maca extract is novel and nonobvious (possesses inventive step) over the cited art, and is therefore a special technical feature. Accordingly, the restriction under 37 C.F.R. § 1.499 is improper and should be withdrawn.

Request for rejoinder with respect to product and method claims

At page 4 of the Office Action the Examiner notes that the restriction between composition and method claims may be withdrawn, upon identification of allowable subject matter in the composition claims and appropriate amendment of the corresponding method claims. Applicants assert that this point is rendered moot by the foregoing traversal of the restriction requirement. However, if the restriction persists, Applicants respectfully request rejoinder of the method claims upon allowance of composition claims.

Summary

Applicants respectfully request the reconsideration and withdrawal of the restriction requirement, and examination of claims 1-27 on their merits. Should there be any questions regarding this submission, or should any issues remain, the Examiner is invited to contact the undersigned at the telephone number set forth below, to advance prosecution.